

HIGH COURT AT CALCUTTA
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 167 of 2023

State of West Bengal

Vs.

M/s. Savin World Resorts Private Limited & Ors.

With

MAT 19 of 2024

Siliguri and Jalpaiguri Development Authority & Anr.

Vs.

M/s. Savin World Resorts Private Limited & Ors.

For the Appellant

*[in MAT 167 of 2023
& Respondent No. 3
in MAT 19 of 2024]*

: Mr. Aniruddha Chatterjee, Adv.
 : Mr. Mohan Lal Banerjee, Adv.
 : Mr. Ijtekhair Munshi, Adv.
 : Mr. Oishik Chatterjee, Adv.

**For the Writ Petitioner
/Respondent No. 1**

*[in MAT 167 of 2023
& in MAT 19 of 2024]*

: Mr. Abrotoosh Mazumder, Sr. Adv.
 : Mr. Dharendra Sharma, Adv.
 : Mr. Arindam Guha, Adv.
 : Mr. Nabankur Pal, Adv.
 : Ms. Sutapa Sen Paul, Adv.
 : Ms. Arpita Dey, Adv.

For the SJDA

: Mr. Anirban Ray, Government Pleader

Hearing Concluded on

: September 30, 2024

Judgement on

: October 05, 2024

DEBANGSU BASAK, J.:-

1. Two appeals have been heard analogously as they emanate out of the same impugned judgement and order dated July 5, 2023 passed in WPA 17656 of 2016.

2. MAT 167 of 2023 is at the behest of the State of West Bengal while MAT 19 of 2024 is at the behest of Siliguri and Jalpaiguri Development Authority (SJDA).

3. Learned advocate appearing for the State has contended that, the private respondent essentially sought specific performance of an alleged contract by way of a writ petition. He has referred to the facts of the case. He has contended that, although, SJDA granted a lease in favour of the private respondent for a period of 10 years, extendable for a further period of 11 years, the private respondent as the lessee did not discharge their obligations under such lease deed. The private respondent had failed to pay the lease rentals within time. The private respondent did not apply for extension of the lease nor any extension had been granted. According to him, there are many disputed questions of facts which the writ Court should not have entered into by way of a writ petition.

4. Learned advocate appearing for the State has contended that, State did not extend the period of lease. Reason for non-extension had been given. Moreover, the writ petitioner/private respondent did not ask SJDA for extension. SJDA in turn has not asked the State for extension of lease.

5. Learned Government Pleader appearing for the SJDA has contended that, initially, State floated an expression of interest for the purpose of setting up of an amusement park in respect of an area of land which is far in excess of what the private respondent was granted lease of.

6. Learned Government Pleader appearing for the SJDA has contended that, a lease commencing with effect from September 26, 2006 in respect of 9.02 acres, had been granted to the private respondent. He has drawn the attention of the Court to the schedule of such lease deed. He has contended that, the private respondent was required to pay quarterly lease rentals. The private respondent had defaulted in payment of quarterly lease rentals with effect from June 2009.

7. Learned Government Pleader appearing for the SJDA has drawn the attention of the Court to the letter dated August 26, 2009 by which, a moratorium for one year was granted to the

private respondent towards payment of lease rentals. He has also drawn the attention of the Court to the response thereto of the private respondent.

8. Learned Government Pleader appearing for the SJDA has relied upon **2022 SCC OnLine SC 247 (Municipal Council Gondia versus Divi Works and Suppliers, HUF and others)** and **2022 Volume 15 Supreme Court Cases 536 (Surjeet Singh Sahni versus State of Uttar Pradesh and others)** in support of the contention that, a writ of mandamus granting the relief of specific performance of the contract/work order is not available.

9. Learned Government Pleader appearing for the SJDA has relied upon **2007 Volume 5 Supreme Court Cases 614 (Hardesh Ores (P) Ltd versus Hede And Company)** for the proposition that, there is no concept of automatic renewal of lease by mere exercise of option by the lessee.

10. Learned Senior Advocate appearing for the private respondent has relied upon a list of dates. He has contended that, State issued an expression of interest for 14 acres of land, for the purpose of setting up a recreation Park. State had issued a notice inviting bids for the development of an ultramodern amusement

park on 14 acres of plot. The predecessor-in-interest of the private respondent was allotted the project. Predecessor-in-interest of the private respondent had deposited a sum of Rs. 30 lakhs as security deposit towards allotment of 14 acres of land for construction of an amusement park and Cineplex.

11. Learned Senior Advocate appearing for the private respondent has submitted that, on September 26, 2006 a registered lease deed was executed between SJDA and the private respondent in respect of land measuring 9.20 acres for a period of 10 years commencing from the date of execution of the lease deed with the right of renewal for a further period of 11 years at the option of the lessee, and further right of renewal on mutually agreed terms subject to construction, operation and management to the satisfaction of SJDA. He has contended that the deed of lease was registered for 21 years with requisite stamp duty.

12. Learned Senior Advocate appearing for the private respondent has contended that, a deed of agreement was executed between SJDA and the private respondent on September 26, 2006 under which, SJDA agreed to provide additional land to the extent of 2.5 acres afterwards.

13. Learned Senior Advocate appearing for the private respondent has contended that, the implementation of the project of setting up central plaza and water park got delayed for a substantial period due to political insurgency. Consequently, private respondent, by a letter dated April 3, 2009 had requested for a grant of moratorium for a period of 2 years from March, 2009 for the lease rental without interest.

14. Learned Senior Advocate appearing for the private respondent has contended that by a letter dated August 26, 2009, SJDA communicated the decision to grant moratorium for one year with effect from the quarter ending June, 2009 till quarter ending March 2010.

15. Learned Senior Advocate appearing for the private respondent has drawn the attention of the Court to the writing dated February, 2010 by which the Joint Secretary, Government of West Bengal sanctioned and permitted reallocation of the area of 0.62 acres in favour of the private respondent. Private respondent had by a letter dated July 13, 2010 proposed to convert 0.62 acres out of 9.20 acres of land for commercial purposes, for a period of 99 years and requested appraisal of the amount to be reimbursed on account of such lease.

16. Learned Senior Advocate appearing for the private respondent has contended that, the proposal of the private respondent contained in the letter dated July 13, 2010 was accepted by the SJDA by their writing dated October 27, 2010. SJDA had written a letter dated October 29, 2010 informing the private respondent that 99 years lease will be effective from April 10, 2007 and April 19, 2016. By a letter dated November 19, 2010 SJDA had documented its approval to the private respondent for commercial exploitation of 0.62 acres of land for a period of 99 years, that is, up to April 9, 2106 with a further extension of lease period for the balance land for another 99 years.

17. Learned Senior Advocate appearing for the private respondent has contended that, under cover of a letter dated January 19, 2011, the private respondent submitted a sum of Rs. 20 lakhs being a part payment against the sum of Rs. 56.10 lakhs and sought for additional time to pay the balance amount. His client had written a letter dated January 25, 2010 seeking allotment of the additional 2.5 acres of land. His client had also submitted a letter dated January 25, 2011 containing commercial offer for the extension of lease of the balance 8.58 acres of land

for a period of 99 years after completion of the initial period of 21 years.

18. Learned Senior Advocate appearing for the private respondent has contended that, by a letter dated January 25, 2011 the private respondent exercised its option for renewal of lease in respect of 9.2 acres, for a further period of 11 years after expiry of the lease on September 26, 2016. He has pointed out that by a letter dated February 10, 2011, the private respondent paid the entire consideration of Rs. 56.10 lakhs for the commercial lease for 99 years in respect of 0.62 acres of land and requested for making arrangements for registration of the lease deed.

19. Learned Senior Advocate appearing for the private respondent has pointed out that by a letter dated July 26, 2011, the SJDA demanded additional lease rent for the Cineplex from the date of its operation. By a letter dated August 2, 2011, private respondent had requested SJDA for additional land as agreed upon. By a letter dated November 21, 2011, the private respondent had requested execution and registration of the deed in respect of 0.62 acres of land for a period of 99 years for which the entire consideration of Rs. 5,61,00,000/- had been paid.

20. Learned Senior Advocate appearing for the private respondent has submitted that, by a letter dated February 22, 2012, the SJDA had demanded a sum, allegedly due from the private respondent. By a letter dated February 23, 2012, the private respondent had requested SJDA to grant some time to pay the outstanding dues. Private respondent had also pointed out that the Cineplex started its commercial operation from December 1, 2009.

21. Learned Senior Advocate appearing for the private respondent has pointed out that, SJDA issued a letter dated October 11, 2012 seeking Rs. 75,66,321/- as due from September 30, 2012 towards license fees for the development, operation and management of the amusement park. The private respondent had replied thereto on October 12, 2012. Again the SJDA had issued a demand notice dated May 14, 2014, claiming a sum of Rs. 1,44,12,728/- as due and payable as of May 31, 2012 towards license fees for the development, operation and management of the amusement park. By a letter dated June 2, 2014, the private respondent had stated the compelling circumstances, under which it was unable to pay the amounts claimed. SJDA had issued a demand notice dated April 8, 2016 for a sum of Rs.

2,55,16,332/- towards license fees for the development, operation and management of the amusement park. Again, in response thereto, by a letter dated July 8, 2016, the private respondent had enumerated the difficult circumstances and requested the cooperation of SJDA to resolve the situation. It is in such circumstances that the private respondent had filed the writ petition in which the impugned judgement and order was passed.

22. Learned Senior Advocate appearing for the private respondent has contended that, there is a State policy with regard to lease and that under such policy, private respondent is entitled to the execution of the lease deed as directed by the learned Single Judge.

23. Learned Senior Advocate appearing for the private respondent has contended that, since the SJDA persisted in issuing demand notices subsequent to the filing of the writ petition, private respondent filed interim applications in the writ petition, challenging such demand notices dated September 11, 2020 and November 4, 2020.

24. Learned Senior Advocate appearing for the private respondent has submitted that, subsequent to the filing of the writ petition, there is a letter dated November 4, 2020 by which,

State treated the lease as renewed. He has contended that, the appellants are bound by the doctrine of promissory estoppel. He has drawn the attention of the Court to the pleadings made in the writ petition and the manner in which, the averments made in the writ petition had been dealt with in the affidavit-in-opposition filed by SJDA.

25. In support of his contention of promissory estoppel, learned Senior Advocate for the private respondent has referred the events happening subsequent to the filing of the writ petition and contended that entire lease rental was paid alongwith interest and that State had agreed to extend this lease.

26. Learned Senior Advocate appearing for the private respondent has contended that, his client invested a sum in excess of Rs. 27 crores. He has referred to photographs which were placed before the learned Single Judge. He has contended that employees in excess of 500 in numbers are working at the amusement park and the Cineplex.

27. Learned Senior Advocate appearing for the private respondent has contended that the impugned judgement and order is limited to 0.62 acres of land. He has also drawn the attention of the Court to newspaper reports published with regard

to the controversy between the parties and its amicable settlement.

28. Learned Senior Advocate appearing for the private respondent has submitted that, a writ petition for the purpose of enforcement of a contract is maintainable. In support of such contention, he has relied upon **2021 Volume 19 Supreme Court Cases 706 (State of Uttar Pradesh versus Sudhir Kumar Singh and Others)**, **2022 Volume 16 Supreme Court Cases 527 (Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and Another versus Shishir Realty Private Ltd. and Others)** and **2023 Volume 2 Supreme Court Cases 703 (M.P. Power Management Company Ltd. Jabalpur versus Sky Power Southeast Solar India Private Ltd. and Others)**.

29. In support of the proposition that, promissory estoppel applies to the facts and circumstances of the present case, learned Senior Advocate appearing for the private respondent has relied upon **1979 Volume 2 Supreme Court Cases 409 (M/s. Motilal Padampat Sugar Mills Co. Ltd. versus State of Uttar Pradesh and Others)**.

30. By a writing dated August 3, 2004 State Government had proposed to grant long-term settlement of an area of 13.68 acres of land of SJDA for the purpose of a recreation Park. SJDA had issued a notice inviting offer for expression of interest for development and management of amusement park in Siliguri in respect of 14 acres of land.

31. The predecessor-in-interest of the private respondent had participated in the expression of interest. SJDA had found the bid of the predecessor-in-interest of the private respondent acceptable and accepted the same. Predecessor-in-interest of the private respondent had executed an affidavit on August 4, 2006 indemnifying SJDA against all liabilities that SJDA may suffer on account of any non-compliance of the conditions of the lease to be granted to the predecessor-in-interest of the private respondent in terms of the expression of interest.

32. By a letter dated October 25, 2005 the predecessor-in-interest informed SJDA of the deposit of the sum of Rs. 30 lakhs as security deposit towards the allotment of 14 acres plot of land. By a letter dated December 2005, the predecessor-in-interest of the private respondent had informed SJDA of its assignment of

the right over and in respect of the plot of land in favour of the private respondent.

33. Private respondent had conducted a survey on the proposal and found the area to be 8.45 acres instead of 14 acres. Consequently, by a letter dated December 20, 2005 private respondent had requested SJDA to allot additional land measuring around 5.5 acres adjacent to the already allocated land for making the amusement park viable. Private respondent had by its letter dated December 27, 2005 reiterated its stand that an area of 14 to 15 acres of land was required to make an amusement park viable and therefore requested allocation of the developed land of about 6.40 acres adjacent to the land allocated. SJDA had provided the private respondent.

34. SJDA had granted lease, by a registered Deed of Lease dated September 26, 2006, for an initial term of 10 years commencing from the date of execution of the deed of lease with the right of renewal for a further term of 11 years at the option of the lessee and a further right of renewal on mutually agreed terms subject to construction, operation and management to the satisfaction of SJDA land measuring approximately 9.20 acres to the private respondent.

35. By letter dated August 19, 2006 the predecessor-in-interest of the private respondent had requested permission to set up a multi-utility commercial project on a small portion of the land allocated for the amusement park in the 9.20 acres. SJDA and the private respondent had executed a Deed of Agreement on September 26, 2006 for 2.5 acres of additional land.

36. A spate of correspondence had followed between SJDA and the private respondents relating to the lease rentals payable and other issues commencing from April 3, 2009. A moratorium had been granted for payment of lease rental.

37. Private respondent in its writ petition and before us has claimed that it paid all the rentals together with interest at the rate of 16% and that, as on date, it paid in excess. This claim of the private respondent has been disputed by SJDA and the State. Disputes with regard to such claim will appear inter alia from the demand letters issued from time to time. Last of demand letters prior to the filing of the writ petition is April 8, 2016. During the pendency of the writ petition, and prior to the impugned judgement and order, State by a letter dated January 30, 2023 had sought realisation of its claim and eviction of the private respondents from the land concerned.

38. In the writ petition, private respondent had sought relief with regard to the demands of payment contained in the letters dated October 11, 2012, May 14, 2014 and April 8, 2016. Private respondent had also filed applications in the writ petition seeking relief with regard to demand letters issued subsequent to the filing of the writ petition.

39. Pleadings filed before the learned Single Judge have disclosed the existence of claim and counterclaim inter alia with regard to the payment of lease rental and discharge of obligations by the private respondent in respect of the deed of lease and expiry of the lease. State has contended that, the lease has expired and that, private respondents are required to be evicted. State has also contended that, lease rentals are due and payable and that appropriate measures under the Bengal Public Demand Recovery Act, 1913 should be initiated for recovery of the same.

40. The issues as to whether, private respondents had discharged all its obligations under the deed of lease, whether the demand of payment of the arrear lease rentals is bad in law and in fact, whether the lease was renewed as claimed by the private respondent, should not be decided on affidavit evidence. There are disputed questions of facts which should have been ideally

decided by a proceeding, between the parties involved, other than by a writ Court.

41. Private respondents as writ petitioners have failed to establish that, the demands of payment as also the allegation of non-performance of the terms and conditions of the Deed of Lease are misplaced and without any basis.

42. ***Sudhir Kumar Singh and Others (supra)*** has held that, writ petition under Article 226 of the Constitution is maintainable at the instance of an aggrieved party to enforce a contractual obligation of the State or its instrumentality where State acts in an arbitrary manner.

43. ***Shishir Realty Private Limited and Others (supra)*** has observed that fairness and good faith standards, ingrained in the contracts entered into by public authorities mandate such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations.

44. ***M.P. Power Management Company Ltd. Jabalpur (supra)*** has considered the scope of judicial review in respect of State action in the matter arising from non-statutory contract. It has held that, if action/inaction of State is prima facie arbitrary,

writ petition would be maintainable even if the action of the State is in relation to a non-statutory contract.

45. Demands of payments of the lease rentals as also requirement of the lessee to vacate the leased land on expiry of the period of lease, in the facts and circumstances of the present case, as has been made by SJDA and the State, cannot be said to be arbitrary or capricious or without any reason whatsoever. State and SJDA have viewed the deed of lease, the conduct of the private respondents with regard thereto and remedies available to both State and SJDA, with regard thereto, in a particular manner. Such view is plausible and can be had the basis of the materials placed on record. Such view cannot be termed as arbitrary or capricious.

46. Although the deed of lease is a non-statutory contract entered into between SJDA, which is an instrumentality of the State within the meaning of Article 12 of the Constitution of India, writ petition against it, in the facts and circumstances of the present case, is not maintainable, at the behest of the private respondents, in view of the fact, the decisions and steps taken by SJDA cannot be termed as arbitrary or capricious. SJDA is entitled to make and raise the demands as have been done.

Demand letters assailed in the writ petition cannot be set aside on the basis that they are without any foundation.

47. The first paragraph of the impugned judgement and order has noted the existence of long-standing disputes between the parties. It has not returned a finding that such disputes stood resolved between the parties.

48. ***Hardesh Ores (P) Ltd (supra)*** has held that, in order to give effect to renewal of lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, and that there is no concept of automatic renewal of lease by mere exercise of the option by the lessee.

49. The claim of the private respondents that, the lease had been automatically renewed by the exercise of right of renewal is required to be considered in terms of the ratio of ***Hardesh Ores (P) Ltd (supra)***. Moreover, it has to be decided, whether, the renewal had been made within time or validity so as to bind the lessor. No relief can be had by the private respondent, in a writ petition, relating to the alleged renewal of lease.

50. Foundational basis of the reliefs sought for by the private respondent in the writ petition is a registered deed of lease which has admittedly expired by efflux of time, with the claim that it

stood renewed automatically in exercise of option being without substance in view of ***Hardesh Ores (P) Ltd (supra)***. Admittedly lease rentals were outstanding and in such view, whether there has been any valid renewal of lease is a disputed question of fact. The demands for payment and eviction cannot be termed as arbitrary or capricious.

51. Private respondents have not established conclusively that there exists a contract which has to be specifically enforced by the Court. Assuming that there is a contract specifically enforceable, ***Municipal Council Gondia (supra)*** has held that, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract in a writ petition under Article 226 of the Constitution of India.

52. ***Surjeet Singh Sahni (supra)*** has also held that, no writ petition under Article 226 of the Constitution of India is maintainable for specific performance of a contract.

53. On the strength of the ratio noted in the 2 previous paragraphs, the learned Single Judge could not have directed execution of the deed of lease in respect of 0.62 acres of land or any part or portion of the originally demised land.

54. Private respondents have contended that, they are entitled to the relief granted by the learned Single Judge, on the basis of the doctrine of promissory estoppel.

55. *M/s. Motilal Padampat Sugar Mills Co. Ltd. (supra)* has considered the doctrine of promissory estoppel in the context of a decision of the State to give exemption from sales tax for a period of 3 years to new industrial units in the State. It has held that, promissory estoppel is not shackled by the doctrine of consideration.

56. In order to successfully sustain a claim of relief founded on promissory estoppel, the claimant has to establish, even on the balance of preponderance of evidence, that the State had made a promise which is within the ambit of law, there is an intention to enter into a legal relationship and that, claimant had done an act, in furtherance of that promise or has been forbidden to do anything.

57. In the facts and circumstances of the present case, neither the State nor SJDA has made any promise to the private respondents on the basis of which, they altered their material position to their prejudice. Parties are bound by the terms of the registered deed of lease and the rival claims with regard thereto is

best adjudicated in a proceeding other than a writ petition. The claim of lease being renewed, has no basis in absence of any document to such effect. Neither State nor SJDA had by any communication promised renewal of the lease. Rather, SJDA and State have consistently taken the stand that, the original lease has expired by efflux of time and that, the private respondents are in arrears of payment of lease rentals. Neither State nor SJDA has made any promise within the ambit of law to the private respondents. Consequently, question of the private respondents having taken any steps in furtherance of such alleged promise does not arise.

58. In view of the discussions above, we set aside the impugned judgement and order dated July 5, 2023. WPA 17656 of 2016 along with all connected applications therein are dismissed. MAT 167 of 2023 and MAT 19 of 2024 are allowed without any order as to cost.

[DEBANGSU BASAK, J.]

59. I agree.

[MD. SHABBAR RASHIDI, J.]